

NATIONAL LABOR RELATIONS BOARD

Region 20

901 Market Street, Suite 400
San Francisco, California 94103-
1735

Telephone: 415/356-5130
FAX: 415/356-5156
Website: www.nlrb.gov

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American Etc. Inc. d/b/a Royal Laundry
1140 San Mateo Avenue
South San Francisco, CA 94080

Robert S. Giolito
Spivak Lipton LLP
11755 Wilshire Boulevard, Suite 2160
Los Angeles, CA 90025

John W. Wilhelm
UNITE HERE!
1775 K Street, NW, Suite 620
Washington, DC 20006

Kristin L. Martin
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105

Michael J. Burns
Seyfarth Shaw LLP
560 Mission Street, Suite 3100
San Francisco, CA 94105-2930

Re: American Etc. Inc. d/b/a Royal Laundry
Case 20-RM-2868

Gentlepersons:

The Employer filed the instant Petition asserting that two labor organizations, Western States Regional Joint Board (WSRJB) and UNITE HERE!, had presented a claim to be recognized as representative of its employees. The Regional Director issued an Order to Show Cause (OSC) reciting information that the Region's administrative investigation into the matter had generated up to that point, and posing the question why he should not dismiss the Petition. On the bases of the parties' responses¹ to that Order and additional investigation conducted by the Region to resolve issues raised by those responses, I have concluded for the reasons that follow that no question concerning representation (QCR) exists, and hereby dismiss the Petition.

¹ The Employer, UNITE HERE!, and WSRJB "and its affiliated Local 75" responded to the OSC.

Background

As noted in the OSC, the Board certified Local 75 as the exclusive bargaining representative of the unit employees in 1993.² In about 2004, Local 75 affiliated with WSRJB, an entity that had been associated with UNITE, and at about the same time, UNITE and HERE merged. Both Local 75 and WSRJB thus became affiliates of UNITE HERE!. The most recent collective-bargaining agreement covering unit employees, effective September 1, 2005 – December 31, 2008, was “By and between American etc. d/b/a Royal Laundry and UNITE-HERE Local # 75,” and was executed on behalf of Local 75 by an agent of WSRJB and two unit employees. The Employer and Local 75 negotiated over terms for a successor contract³ but had not reached an agreement when they last met on February 6.⁴

On February 28, Local 75’s executive board unanimously endorsed a petition to disaffiliate from UNITE HERE! and to join other former UNITE HERE! affiliates to form a new union. The petition explicitly expressed a desire that WSRJB continue to serve as Local 75’s agent for collective-bargaining.⁵ On March 7, WSRJB’s elected delegates likewise voted unanimously to sever its ties with, and to strike references in its constitution to, UNITE HERE! On March 12, WSRJB Regional Manager Cristina Vazquez informed the Employer that WSRJB and its affiliated locals had voted to end their relationship with UNITE HERE! and to form an independent union. She added:

The Joint Board and its affiliated locals will continue all of their activities as bargaining representative for the employees, including receiving dues deducted by the Employer from the wages of its employees and representing bargaining unit employees for grievances and negotiations. The shop stewards with whom you have dealt in the past will continue to deal with you in the future, and their duties will continue as before. They will be assisted by the same Joint Board staff representatives who have represented your employees in the past. We are the same organization which you have recognized and with which you dealt in the past.

² In 20-RC-16961, the petition identified American Linen in South San Francisco as employer and International Textile Processors Union, Local 75 as petitioner. Apparently the Employer is a successor or assumed a new name. Prior to the attempted disaffiliation addressed below, the identity of Local 75’s international affiliate changed as a result of mergers, first becoming UNITE and subsequently UNITE-HERE!

³ Local 75’s bargaining team was led by WSJRB Regional Secretary Barbara Mejia and included unit employees.

⁴ All dates refer to 2009 unless otherwise specified.

⁵ WSRJB is affiliated with numerous local unions in half a dozen Western States. Its constitution requires that affiliates submit to it all dues they collect, and invests it with exclusive authority, among other things, to enter into collective-bargaining agreements, call strikes, and adjust grievances on behalf of employees represented by the affiliated local unions.

After the Employer brought WSRJB's communication to the attention of UNITE HERE!, by letter dated March 25 UNITE HERE! Local 2 President Mike Casey suggested that the Employer should remit dues that it withheld from employees directly to UNITE HERE! headquarters in New York. By letter to the Employer dated March 26, UNITE HERE! President/Hospitality Industry John Wilhelm asserted that the Employer's collective-bargaining relationship was with UNITE HERE!, that the International's constitution constrained affiliates from seceding, and that, "In other words, you should continue recognizing the UNITE HERE affiliates that represent your employees." The Employer had already responded to WSRJB by letter dated March 19 addressed to WSRJB Regional Secretary-Treasurer Mejia. The Employer claimed to perceive a question concerning representation because the current recognized representative was "UNITE HERE Local 75," and both UNITE HERE! and WSRJB claimed Local 75 as an affiliate. The Employer thereupon canceled the bargaining session scheduled for March 25 and, on March 30, filed the instant RM petition on the purported basis of uncertainty as to the identity of its employees' bargaining representative.

Analysis

I note first of all that the Employer does not base its Petition on objective considerations that give it a good faith doubt about Local 75's majority status. There is no evidence that such considerations exist. Rather, the Employer asserts that it seeks an election to establish whether it should recognize UNITE HERE! or WSRJB as its employees' statutory representative. I believe that the correct answer can be provided without an election, and is neither.

Following the Supreme Court's decision in *NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First)* 475 U.S.192 (1986), the Board revisited the question as to the circumstances in which a union affiliation or merger may relieve an employer of its obligation to recognize and bargain with an incumbent union. In *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), the Board explicitly abandoned the "due process" component of the two-prong test that it had applied in the past, and decided that henceforth, the sole criterion would be "substantial continuity." The Board observed (*id.* at page 147),

[I]f it is determined that the postaffiliation union lacks substantial continuity with the preaffiliation union, a question concerning representation is thereby raised and the employer's obligation to recognize the union ceases.

* * * * *

In cases in which there is substantial continuity between the preaffiliation and post affiliation union, the postaffiliation union is largely unchanged from the preaffiliation entity – i.e., nothing has happened to the union

that would lead one reasonably to think that the employees no longer support it.

To assess the existence of substantial continuity, the Board considers whether the change is “sufficiently dramatic” to alter the union’s identity (*May Department Stores*, 289 NLRB 661, 665 (1988), enf’d. 897 F.2d 221 (7th Cir. 1990) in the context of the totality of the circumstances (*Mike Basil Chevrolet*, 331 NLRB 1044 [2000])). Logically, the same standard would apply to disaffiliation in pursuit of independence from an international union, as that is merely the flip side of the affiliation coin.

Analyzed within this framework, it appears that Local 75’s decision to try to disaffiliate from UNITE HERE!, WSRJB’s decision to do the same, and Local 75 and WSRJB’s mutual decision to maintain their relationship, do not raise a QCR. As noted above, when WSRJB informed the Employer by letter dated March 12 that it and its affiliated locals had ended their ties to UNITE HERE!, it also stated that the locals would continue “all of their activities as bargaining representative for the employees.” It appears that Local 75’s action to disaffiliate from the International(s) resulted in no changes whatsoever in the identity of its shop stewards, and because of its continued affiliation with WSRJB, neither did it cause any change in the identity of the WSRJB staff representatives or principal officers who dealt with the Employer on behalf of Local 75. These circumstances point to continuity rather than change that is “sufficiently dramatic” to create a QCR.

UNITE HERE! contends that its affiliates are not free to cut their affiliation bonds, and has initiated litigation to seek to compel restoration of the ties. The NLRB has no authority or need to assess the merits of UNITE HERE!’s contention, or to concern itself with the outcome of such litigation, unless and until the conflict creates a discontinuity sufficient to raise a QCR. As is evident from the preceding facts, the moves by Local 75 and WSRJB to disaffiliate, and UNITE HERE!’s suit to counter those moves, have not done so.

UNITE HERE! also has asserted that disaffiliation may cripple various seceding entities’ financial ability to fulfill their representational responsibilities. One supposes that time will tell whether such speculation is warranted, but for the present, there is no evidence that alleged financial straits have compromised Local 75’s capacity to represent employees, or WSRJB’s capacity to fulfill the duties that Local 75 has entrusted to WSRJB.

The essential fact is that Local 75 is the collective-bargaining representative of employees, regardless of the decision that it made to disaffiliate from UNITE HERE!, and whatever the ultimate outcome of that attempt to sever ties. Local 75’s decision to continue its relationship with WSRJB contributed mightily to continuity, again regardless of WSRJB’s decision to disaffiliate from UNITE HERE! or the ultimate outcome of that attempt.

The Employer posited “that the Board’s schism cases do not discuss much the less resolve the dilemma of which union should be considered the incumbent.” In my opinion, the Employer’s plaint in that regard is inapposite because schism simply does not apply to this situation. While the fracture between UNITE and HERE! may well constitute a schism, occurring as it did at the highest level of the International, that is of no matter. The decision by the executive board of Local 75, at a much lower level of the hierarchy, to disaffiliate from UNITE HERE! and to become an “independent union” does not meet the criteria that the Board has established for schism.⁶

Conclusion

As noted above, Local 75 has represented the Employer’s bargaining unit employees since at least 1993. A local union has extensive liberty to designate a spokesperson, liaison, or representative. Since about 2004, Local 75 has tapped WSRJB to fulfill such a role, and as noted above in footnote 5, WSRJB’s charge has been nearly all-encompassing.⁷ Local 75 has continued to operate as it did prior to its move to disaffiliate, and because it maintained its longstanding relationship with WSRJB, its interface with the employees whom it represents, and with the Employer, changed not at all. Local 75’s attempt to discontinue its relationship with UNITE HERE! may or may not endure, but that move has neither disturbed the reality that Local 75 is the certified bargaining representative of the Employer’s employees, nor, save for the Employer’s response, affected Local 75’s day-to-day representation of employees. In these circumstances, no QCR exists, and the Petition must be dismissed.

⁶ The Board has emphasized that a conflict between a single local and its parent international, no matter how heated and vitriolic, does not present the basic intra-union conflict at the highest level required for the “schism” exception. *Swift & Co.*, 145 NLRB 756, 762 (1963) (“a [mere] disaffiliation movement with [the Local] born out of a policy conflict between that local and its international” does not satisfy the requirements for a schism). Accord, *Georgia Kaolin Company*, 287 NLRB 485, 488 (1987) (“Disaffection among members of a local with action taken by an international does not constitute schism,” even when that dissatisfaction involves the events surrounding a convention—the highest governing body of the international); *Yates Industries, Inc.*, 264 NLRB 1237, 1249 (1982) (no schism when there exists “only a disagreement between a local and its international”); *Standard Brands, Inc.*, 214 NLRB 72, 73 (1974) (no schism when “certain members [of a local] were dissatisfied of a proper and legitimate action taken by its international,” since that dissatisfaction does not create a “basic intra-union conflict over policy at the highest level of the international”).

⁷ In mid-2007, WSRJB engaged the Workers’ Resource and Action Center (WRAC) to serve as an initial contact point for employees who had questions or issues about contract enforcement. WRAC’s role was to discuss the matter with the employee and, as warranted, file a grievance at the first step, request information, and refer it to a union representative. The grievance would then pass to WSRJB for further processing. The arrangement proved cumbersome, and in May 2008, the staffs of Local 75 and WSRJB decided to end the relationship. WSRJB advised WRAC about the termination insofar as employees represented by Local 75 were concerned, and instructed WRAC to turn over to WSRJB all information about grievances that involved such employees. Likewise, those employees were informed that, as had been the case prior to mid-2007, they should contact union representatives directly about contractual questions or issues.

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **June 26, 2009**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,

/s/ Tim Peck

Tim Peck
Acting Regional Director

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.